

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK M.,

Plaintiff,

Case No. 23-cv-11193
Hon. Matthew F. Leitman

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

/

**ORDER (1) GRANTING PLAINTIFF'S MOTION FOR RELIEF FROM
JUDGMENT (ECF No. 12); (2) VACATING ORDER DISMISSING
COMPLAINT AND JUDGMENT (ECF Nos. 10, 11); (3) DIRECTING
PLAINTIFF TO OBTAIN NEW COUNSEL; AND (4) RE-REFERRING
ACTION TO ASSIGNED MAGISTRATE JUDGE**

In this action, Plaintiff Mark M. challenges the decision to discontinue his disability benefits. (*See* Compl., ECF No. 1.) On July 25, 2023, the assigned Magistrate Judge issued an order in which she directed Mark M. to file a motion for summary judgment by no later than August 25, 2023. (*See* Order, ECF No. 5.) Mark M. did not file a motion by that date.

Based on Mark M.'s failure to file a motion for summary judgment, the Magistrate Judge issued an order to show cause in which she ordered Mark M. to "show cause in writing by September 13, 2023, why [his] case should not be dismissed for failure to prosecute under [Local Rule] 41.2." (Order, ECF No. 8,

PageID.610.) The Magistrate Judge then warned Mark M. that his “[f]ailure to timely respond may result in a recommendation to dismiss [his] case.” (*Id.*)

Mark M. did not respond to the show cause order. Thus, on September 22, 2023, the Magistrate Judge issued a report and recommendation in which she recommended that the Court dismiss Mark. M’s Complaint with prejudice for failure to prosecute (the “R&R”). (*See* R&R, ECF No. 9.) Mark M. did not file any objections to the R&R, and the Court adopted the recommended disposition of the R&R and dismissed Mark M.’s Complaint on February 2, 2024. (*See* Order, ECF No. 10.) The Court entered judgment against Mark M. on that same day. (*See* Judgment, ECF No. 11.)

On June 13, 2024, Mark M. filed a motion for relief from judgment. (*See* Mot., ECF No. 12.) In the motion, Mark M. explains that his counsel did not file a summary judgment motion on his behalf or respond to the Magistrate Judge’s show cause order because his counsel was suffering from incurable blood cancer that rendered her incapacitated and unable to fully represent Mark M in this case. (*See id.*) Mark M. therefore asks the Court to set aside the judgment and allow him to retain new counsel. (*See id.*) Under these circumstances, the Commissioner has indicated to the Court that he does not oppose Mark M’s motion.

For the reasons set forth in Mark’s M.’s motion for relief from judgment (ECF No. 12), the motion is **GRANTED** as follows:

- The Court's June 2, 2024, order adopting the R&R (ECF No. 10) and the Court's June 2, 2024, judgment are **VACATED**;
- Mark M. shall obtain new counsel and that counsel shall file an appearance on the docket in this case by no later than **July 31, 2024**; and
- This case shall be **RE-REFERRED** to the assigned Magistrate Judge for all pre-trial proceedings. Once new counsel files an appearance on Mark M.'s behalf, the Magistrate Judge shall set a new schedule for the filing of dispositive motions.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: June 17, 2024

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 17, 2024, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126